USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ___
DATE FILED 8/28/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAUNDRY, DRY CLEANING and ALLIED WORKERS JOINT BOARD, UNITE/HERE,

Plaintiff,

-v-

STAINLESS PARTNERS, INC. d/b/a WORLD CLEANERS,

Defendant.

No. 08 Civ. 2532 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

On March 13, 2008, plaintiff Laundry, Dry Cleaning and Allied Workers Joint Board, Unite/Here filed this action to confirm and enforce two arbitration awards issued by an arbitrator, Beverly Gross, Esq., on April 30, 2007 and November 10, 2007. Service of the summons and complaint was made on Defendant on April 1, 2008. Defendant did not answer the complaint or otherwise move with respect to the complaint. Having examined the record, and for the reasons set forth below, the Court grants plaintiff's motion to confirm the arbitration award.

I. BACKGROUND

This dispute stems from a collective bargaining agreement dated November 28, 2003 (the "Agreement"), between the defendant Stainless Partners, Inc. d/b/a World Cleaners, and Plaintiff. The dispute involved whether defendant violated the Agreement by (1) failing to pay bargaining unit employees for thirty-five hours of work at their regular rate; (2) laying off eight employees; and (3) requiring or permitting supervisors to perform bargaining unit work in the absence of an emergency. (*See* Compl. Ex. A (Apr. 30, 2007 Order of Barbara Gross, Esq. ("Apr. 30 Order")) at 2.) Ms. Gross, the arbitrator, held a hearing on Plaintiff's grievances on March 23, 2007 and another on May 17, 2007. (*See* Compl. Ex. B (Nov. 10, 2007 Order of Barbara Gross, Esq. ("Nov. 10 Order")).)

Defendant failed to appear at either hearing. (*See id.*) The arbitration proceeded in Defendant's absence, and Plaintiff presented evidence in support of its claims. (*See id.*; *see also* Apr. 30 Order at 1-3.) On April 30, 2008, Ms. Gross, found in favor of Plaintiff on the first and third claims, but found that an additional hearing was necessary in order to elicit additional facts necessary to decide the second claim. (*See* Apr. 30 2008 Order at 3.) After the second hearing on May 17, 2007, Ms. Gross found in favor of Plaintiff on the remaining claim. (*See* Nov. 10, 2007 Order.)

According to Plaintiff, Defendant has failed to abide by the arbitration awards issued by Ms. Gross and has not sought to vacate the awards. (*See* Compl. ¶¶19-20.) Seeking judicial enforcement of the award, Plaintiff commenced this action to confirm the arbitration award on May 5, 2008. Defendant was served with the complaint on March 13, 2008. Defendant did not answer the complaint or otherwise move with respect to the complaint. On July 9, 2008, Plaintiff moved for a default judgment.

II. DISCUSSION

"[D]efault judgments in confirmation/vacatur proceedings are generally inappropriate." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Rather, the court should treat the petition "as akin to a motion for summary judgment based on the movant's submissions," and grant the motion if, after examining the moving party's submission, the court determines that the moving party "has met its burden of demonstrating that no material issue of fact remains for trial." *Id.* at 109-10 (citation omitted); *see also Trustees of the UNITE HERE National Health Fund v. JY Apparels, Inc.*, 535 F. Supp. 2d 426, 428 (2008). "If the non-movant does not respond, its failure to contest issues not resolved by the record will weigh against it." *D.H. Blair*, 462 F.3d at 109; *see also JY Apparels*, 535 F. Supp. 2d at 428-29. Summary judgment may not be granted unless "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."

Fed. R. Civ. P. 56(c). The burden of demonstrating the absence of an issue of material fact lies with the moving party. *Sista v. CDC Ixis N. Am., Inc.*, 445 F.3d 161, 169 (2d Cir. 2006). The court must view all facts in the light most favorable to the non-moving party. *Id.*

"Normally, confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court, and the court must grant the award unless the award is vacated, modified, or corrected." *D.H. Blair*, 462 F.3d at 110 (citations and internal quotation marks omitted). "Only 'a barely colorable justification for the outcome reached' by the arbitrators is necessary to confirm the award." *Id.* (quoting *Landy Michaels Realty Corp. v. Local 32B-32J, Service Employees Int'l Union*, 954 F.2d 794, 797 (2d Cir. 1992)). "The Court must enter judgment for the party seeking to confirm the award unless the opposing party shows that the award was based on a manifest disregard for the law." *JY Apparel*, 535 F. Supp. 2d at 429 (citing *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953)).

The Court has reviewed the record and finds that Plaintiff has sufficiently supported its motion by showing a "colorable justification" for the outcome reached by the arbitrator. Defendant has submitted no opposition papers nor otherwise raised any questions of fact precluding an award of summary judgment. Accordingly, the motion to confirm the arbitration award is granted.

Plaintiff also seeks an award of costs for this proceeding, and has submitted an affidavit demonstrating that the costs incurred in seeking confirmation of the arbitration award total $455.00. (*See* Pilecki Aff. Ex. E.) Plaintiffs do not point to any statutory or contractual authority for the award of such fees. However, a court may award attorneys' fees and costs pursuant to its inherent equitable powers "'when a challenger refuses to abide by an arbitrator's decision without justification.'" *Celsus Shipholding Corp. v. Manunggal*, No. 06 Civ. 13598 (DLC), 2008 WL 474148, at *2 (S.D.N.Y. Feb. 21, 2008) (quoting *Int'l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985)). Here, Defendant failed to appear in this action, and has offered no justification for its failure to abide by the arbitrator's decision and pay the award. The Court has reviewed the Pilecki Affidavit and finds the assessment of costs to be reasonable. Accordingly, Plaintiff's request for an award of costs is granted in the amount of $455.00.

III. CONCLUSION

For the foregoing reasons, the motion to confirm the arbitration award in the amount of $11,550.00 plus interest is granted. In addition, Plaintiff is awarded attorneys' fees and costs in the amount of $455.00. The Clerk of the Court is respectfully directed to enter judgment for Plaintiff and close this case.

SO ORDERED.

DATED: August 27, 2008
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE